

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Brian Whitaker**

Plaintiff,

v.

**Johnny Was, LLC**, a Delaware  
Limited Liability Company

Defendant.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Johnny Was, LLC, a Delaware Limited Liability Company; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Johnny Was, LLC owned Johnny Was located at or about 660 Stanford Shopping Center, Palo Alto, California, in March 2021 and April 2021.

3. Defendant Johnny Was, LLC owns Johnny Was ("Store") located at or

1 about 660 Stanford Shopping Center, Palo Alto, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business  
3 capacities, their ownership connection to the property and business, or their  
4 relative responsibilities in causing the access violations herein complained of,  
5 and alleges a joint venture and common enterprise by all such Defendants.  
6 Plaintiff is informed and believes that each of the Defendants herein is  
7 responsible in some capacity for the events herein alleged, or is a necessary  
8 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
9 the true names, capacities, connections, and responsibilities of the Defendants  
10 are ascertained.

11  
12 **JURISDICTION & VENUE:**

13 5. The Court has subject matter jurisdiction over the action pursuant to 28  
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 6. Pursuant to supplemental jurisdiction, an attendant and related cause  
17 of action, arising from the same nucleus of operative facts and arising out of  
18 the same transactions, is also brought under California's Unruh Civil Rights  
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
21 founded on the fact that the real property which is the subject of this action is  
22 located in this district and that Plaintiff's cause of action arose in this district.

23  
24 **FACTUAL ALLEGATIONS:**

25 8. Plaintiff went to the Store in March 2021 with the intention to avail  
26 himself of its goods or services motivated in part to determine if the  
27 defendants comply with the disability access laws. Not only did Plaintiff  
28 personally encounter the unlawful barriers in March 2021, but he wanted to

1 return and patronize the business several times but was specifically deterred  
2 due to his actual personal knowledge of the barriers gleaned from his  
3 encounter with them.

4 9. The Store is a facility open to the public, a place of public  
5 accommodation, and a business establishment.

6 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
7 to provide wheelchair accessible sales counters in conformance with the ADA  
8 Standards as it relates to wheelchair users like the plaintiff.

9 11. The Store provides sales counters to its customers but fails to provide  
10 any wheelchair accessible sales counters.

11 12. One problem that plaintiff encountered was that the sales counter in the  
12 front and in the rear were too high. While there were lowered tables nearby,  
13 transactions necessarily take place above the fixed counters where the point-  
14 of-sale machines were located. In fact, an employee tried to lower the point-  
15 of-sale machine during plaintiff's visit, but she was not able to. As a result, an  
16 employee had to assist the plaintiff with inserting his debit card.

17 13. Plaintiff believes that there are other features of the sales counters that  
18 likely fail to comply with the ADA Standards and seeks to have fully compliant  
19 sales counters for wheelchair users.

20 14. On information and belief, the defendants currently fail to provide  
21 wheelchair accessible sales counters.

22 15. These barriers relate to and impact the plaintiff's disability. Plaintiff  
23 personally encountered these barriers.

24 16. As a wheelchair user, the plaintiff benefits from and is entitled to use  
25 wheelchair accessible facilities. By failing to provide accessible facilities, the  
26 defendants denied the plaintiff full and equal access.

27 17. The failure to provide accessible facilities created difficulty and  
28 discomfort for the Plaintiff.

1 18. The defendants have failed to maintain in working and useable  
2 conditions those features required to provide ready access to persons with  
3 disabilities.

4 19. The barriers identified above are easily removed without much  
5 difficulty or expense. They are the types of barriers identified by the  
6 Department of Justice as presumably readily achievable to remove and, in fact,  
7 these barriers are readily achievable to remove. Moreover, there are numerous  
8 alternative accommodations that could be made to provide a greater level of  
9 access if complete removal were not achievable.

10 20. Plaintiff will return to the Store to avail himself of its goods or services  
11 and to determine compliance with the disability access laws once it is  
12 represented to him that the Store and its facilities are accessible. Plaintiff is  
13 currently deterred from doing so because of his knowledge of the existing  
14 barriers and his uncertainty about the existence of yet other barriers on the  
15 site. If the barriers are not removed, the plaintiff will face unlawful and  
16 discriminatory barriers again.

17 21. Given the obvious and blatant nature of the barriers and violations  
18 alleged herein, the plaintiff alleges, on information and belief, that there are  
19 other violations and barriers on the site that relate to his disability. Plaintiff will  
20 amend the complaint, to provide proper notice regarding the scope of this  
21 lawsuit, once he conducts a site inspection. However, please be on notice that  
22 the plaintiff seeks to have all barriers related to his disability remedied. See  
23 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
24 encounters one barrier at a site, he can sue to have all barriers that relate to his  
25 disability removed regardless of whether he personally encountered them).

26  
27 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
28 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all

1 Defendants.) (42 U.S.C. section 12101, et seq.)

2 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
3 again herein, the allegations contained in all prior paragraphs of this  
4 complaint.

5 23. Under the ADA, it is an act of discrimination to fail to ensure that the  
6 privileges, advantages, accommodations, facilities, goods and services of any  
7 place of public accommodation is offered on a full and equal basis by anyone  
8 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
9 § 12182(a). Discrimination is defined, inter alia, as follows:

- 10 a. A failure to make reasonable modifications in policies, practices,  
11 or procedures, when such modifications are necessary to afford  
12 goods, services, facilities, privileges, advantages, or  
13 accommodations to individuals with disabilities, unless the  
14 accommodation would work a fundamental alteration of those  
15 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 16 b. A failure to remove architectural barriers where such removal is  
17 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
18 defined by reference to the ADA Standards.
- 19 c. A failure to make alterations in such a manner that, to the  
20 maximum extent feasible, the altered portions of the facility are  
21 readily accessible to and usable by individuals with disabilities,  
22 including individuals who use wheelchairs or to ensure that, to the  
23 maximum extent feasible, the path of travel to the altered area and  
24 the bathrooms, telephones, and drinking fountains serving the  
25 altered area, are readily accessible to and usable by individuals  
26 with disabilities. 42 U.S.C. § 12183(a)(2).

27 24. When a business provides facilities such as sales or transaction counters,  
28 it must provide accessible sales or transaction counters.

25. Here, accessible sales or transaction counters have not been provided in conformance with the ADA Standards.

26. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

27. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

28. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

**II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

29. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code §51(b).

30. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

31. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each  
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
3 (c).)

4  
5 **PRAYER:**

6 Wherefore, Plaintiff prays that this Court award damages and provide  
7 relief as follows:

8 1. For injunctive relief, compelling Defendants to comply with the  
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
10 plaintiff is not invoking section 55 of the California Civil Code and is not  
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. For equitable nominal damages for violation of the ADA. See  
13 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)  
14 and any other equitable relief the Court sees fit to grant.

15 3. Damages under the Unruh Civil Rights Act, which provides for actual  
16 damages and a statutory minimum of \$4,000 for each offense.

17 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
18 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

19  
20 Dated: April 26, 2021

CENTER FOR DISABILITY ACCESS

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23 By: \_\_\_\_\_



24 Amanda Seabock, Esq.  
25 Attorney for plaintiff  
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